

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<b>JOHN DUNMIRE,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>CIVIL ACTION NO. 05-64 Erie</b>
	)	
<b>CAPT. DEPASQUAL, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**MOTION TO DISMISS**

AND NOW, come the defendants, DiPasqua, Brooks, Harlow, Giddens, and the Pennsylvania Department of Corrections, by their attorney's, Thomas W. Corbett, Jr., Attorney General, Rodney M. Torbic, Senior Deputy Attorney General, and Susan J. Forney, Chief Deputy Attorney General, Chief, Litigation Section, and hereby move to dismiss plaintiff's claims pursuant to Fed.R.Civ.P. 12(b)(5) and (6) for the reasons that follow:

1. Plaintiff John Dunmire is a prisoner currently incarcerated at the State Correctional Institution at Albion (SCI-Albion).
2. He has filed a civil rights lawsuit under 42 U.S.C. §1983 alleging that he was strip searched in front of female corrections officers and other inmates in violation of the Eighth Amendment to the United States Constitution.
3. The defendants are the following officials and officers from SCI-Albion: Captain DiPasqua (improperly spelled DePasqual in amended complaint), Superintendent Marilyn Brooks, Deputy Superintendent Michael Harlow, and Major Giddens.
4. Dunmire also named the Pennsylvania Department of Corrections as a defendant.
5. He seeks compensatory and punitive damages.
6. The complaint fails to state a claim upon which relief can be granted.

7. Dunmire failed to exhaust his administrative remedies prior to filing this lawsuit.

8. Dunmire's claim against the Department of Corrections is barred by the Eleventh Amendment.

9. The amended complaint was not served on the new defendants, Harlow and Giddens.

WHEREFORE, it is respectfully requested that defendants' motion to dismiss be granted.

Respectfully submitted,

THOMAS W. CORBETT, JR.  
Attorney General

/s/ Rodney M. Torbic  
Rodney M. Torbic  
Senior Deputy Attorney General  
Attorney I.D. No. 66089

Susan J. Forney  
Chief Deputy Attorney General

Office of Attorney General  
6<sup>th</sup> Floor, Manor Complex  
564 Forbes Avenue  
Pittsburgh, PA 15219

Date: August 26,, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that on August 26, 2005, I electronically filed the foregoing *Motion to Dismiss* with the Clerk of Court using the CM/ECF system. And I hereby certify that I have mailed the foregoing document by United States Postal Service to the following non CM/ECF participants:

John Dunmire, CL-4931  
SCI-Albion  
10745 Route 18  
Albion, PA 16475-0001

By: /s/ Rodney M. Torbic  
RODNEY M. TORBIC  
Senior Deputy Attorney General